

EXHIBIT 10

DEPOSITION OF DAVID HARRIS

1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION
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 4 JOSHUA CHATWIN, : CIVIL NO. 2:14-cv-375
 5 Plaintiff, : DEPOSITION OF:
 : DAVID HARRIS
 6 v. :
 : TAKEN: December 9, 2015
 7 DRAPER CITY; Draper City :
 Police Department; : Judge Dale A. Kimball
 8 OFFICER J. PATTERSON, in :
 his individual and :
 9 official capacity; :
 10 OFFICER HEATHER BAUGH,
 in her individual and
 11 official capacity;
 12 OFFICER DAVID HARRIS, in
 his individual and
 13 official capacity;
 OFFICER KURT IMIG, in
 14 his individual capacity;
 SUPERVISOR TBA; and JOHN
 DOES 1-10
 15 Defendants.

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20 Deposition of DAVID HARRIS, taken on behalf
 21 of the plaintiff, at 201 South Main Street, Suite
 22 1300, Salt Lake City, Utah, before PHOEBE S.
 23 MOORHEAD, Certified Shorthand Reporter for the State
 24 of Utah, pursuant to Notice.
 25

1 talk with anyone to prepare for this deposition?

2 A. No.

3 Q. Did you do anything else to prepare for your
4 deposition besides read this report?

5 A. Yes.

6 Q. What did you do?

7 A. I read the -- the transcript from the
8 preliminary hearing; and I went over some -- the
9 interrogatories; and I read the city policy on
10 contacting the fire department.

11 Q. All right. So I'm going to ask you a couple
12 questions, and I'm actually going to jump down to the
13 bottom of the page. It says here -- if you start with a
14 paragraph that says -- it's the fourth paragraph, single
15 sentence paragraph from the bottom, starting
16 with "Joshua." Do you see that?

17 A. Yes.

18 Q. It says, "Joshua refused a BBT and was
19 arrested for DUI at 11:56." And the next paragraph
20 says, "I searched the Honda in preparation for the state
21 tax impound." Do you see that?

22 A. Yes, ma'am.

23 Q. What happened with Mr. Chatwin in between that
24 time line of your narrative there?

25 A. Oh, so I arrested him, then went -- he was

1 turned over to Officer Patterson.

2 Q. What do you mean by "turned over"?

3 A. I had him -- I just had Josh stand by him --
4 Josh Patterson stand by him while I went to prepare my
5 vehicle and to prepare the Honda for impound.

6 Q. All right. So it says here you located -- I'm
7 going to continue to read that paragraph. "I located a
8 sealed bottle of Popov Vodka in a brown sack on the rear
9 floor, passenger side. When I turned from photographing
10 the vehicle and bottle, I noticed that Joshua was lying
11 with on the ground. He was not conscious, but he was
12 breathing. I called for medical at 1159 hours." So
13 let's just talk about that one for a minute.

14 Did you hear or see anything while you were
15 looking through the vehicle involving Joshua Chatwin or
16 Officer Patterson?

17 A. Involving Josh, yes. I found the evidence,
18 the vodka in the vehicle and inventory in the vehicle.
19 Nothing with the interaction.

20 Q. Right. So -- and you understand, that's why
21 we're here today?

22 A. Yes.

23 Q. Is because of the incident on May 18, 2010?

24 A. Yes, ma'am.

25 Q. All right. And I did forget to tell you from

1 hands reach, but in the same yard.

2 Q. All right. So where was Mr. Chatwin the last
3 time you saw him, before you went to search his car?

4 A. I believe he was on the lawn.

5 Q. In what position? Was he standing?

6 A. Standing.

7 Q. And he was on the lawn -- as you face the
8 house, which side of the lawn -- of the driveway?

9 MR. HAMILTON: Objection. Form.

10 THE WITNESS: The left side.

11 BY MS. MARCY:

12 Q. Was he on the side of the driveway anywhere?

13 MR. HAMILTON: Objection. Form.

14 THE WITNESS: I didn't understand what you
15 mean by that.

16 BY MS. MARCY:

17 Q. Okay. Where in the yard on the grass was he
18 standing?

19 A. In front of the home, left side of the
20 driveway.

21 Q. Okay. When you turned around, and you saw
22 Mr. Chatwin, where was his head?

23 A. In the gutter.

24 Q. What position was his body in?

25 A. Face down. And I don't remember which

1 direction his feet were going.

2 Q. Do you remember what part of his head was in
3 the -- was touching the gutter?

4 A. No.

5 Q. Did you see any blood emanating from
6 Mr. Chatwin?

7 A. Yes.

8 Q. Where was the blood located?

9 A. In his ear.

10 Q. So you could see his ear?

11 A. Yes.

12 Q. While he was lying on the ground?

13 A. Yes.

14 Q. So was it his left ear? Or his right ear?

15 A. His left ear.

16 Q. Was the left ear facing up, away from the
17 gutter?

18 A. I don't think it was facing up. I think he
19 was face down, and I could see the left ear.

20 Q. Well, that's what I mean, now. I'm saying --
21 if he's -- if he's -- you said here in the report that
22 he was not conscious, right? But breathing.

23 A. Correct.

24 Q. So he's lying in the gutter, and you see blood
25 coming out of his left ear. Was -- but it wasn't -- you

1 who had -- who was bleeding -- no. I believe I said
2 that. I know we called for an unconscious person.

3 Q. Did you tell the -- what would you call them?
4 A dispatcher?

5 A. Yes, ma'am.

6 Q. All right. Did you tell the dispatcher that
7 the arrestee had been subject to force?

8 A. No.

9 Q. It says here -- in the next paragraph here, it
10 says, "After a few minutes of waiting, I asked that
11 medical hurry." Do you see that there?

12 A. Yes.

13 Q. Why did you -- so that -- well, does that mean
14 you called them a second time?

15 A. I called dispatch a second time.

16 Q. Why did you feel like you needed to ask them
17 to hurry?

18 A. They were taking a long time to get there. I
19 felt it was a long time to get there.

20 Q. And why -- why did you think that was a long
21 time?

22 A. Because I wanted them to get there quick.

23 Q. Were you worried?

24 A. Yes, I was worried.

25 Q. About Mr. Chatwin's condition?

1 A. Yes.

2 Q. Why were you worried about Mr. Chatwin's
3 condition?

4 A. Because he had been knocked unconscious and
5 was bleeding from out of his ear.

6 Q. The next line, it says, "Joshua eventually
7 regained consciousness." How much time from the time
8 that you saw him unconscious until the time he regained
9 consciousness passed?

10 A. From -- from when I saw him to when he gained
11 consciousness?

12 Q. Yes.

13 A. A minute.

14 Q. You're sure it was about a minute?

15 A. I'm guessing -- it seems like it was about a
16 minute.

17 Q. But you can't be sure it was a minute?

18 A. No.

19 Q. Or about a minute?

20 A. Pardon me?

21 Q. Or it could have been -- could it have been
22 longer than a minute?

23 A. Could have been.

24 Q. It says here, "We helped Joshua lean against
25 the side of my vehicle." Was that -- did I read that

1 Q. All right. So down at the bottom, it says
2 here -- if you look at the very bottom paragraph, where
3 it starts with "The suspect was lying on his stomach,"
4 do you see that?

5 A. Yes.

6 Q. All right. It says, "We checked to make sure
7 he was conscious and breathing. And for his safety, we
8 tried to keep him in that position until medical
9 arrived. I stayed kneeling beside him and kept telling
10 him that medical was on the way to help him. The
11 suspect then kept trying to roll over, so we sat him up
12 against Officer Harris's patrol vehicle to steady him
13 and try to prevent any injury and make him more
14 comfortable."

15 Now, when he says -- he says there, "to make
16 sure he was conscious." I thought you said he was
17 unconscious.

18 MR. HAMILTON: Objection. Form.

19 THE WITNESS: He was unconscious, and then he
20 became conscious.

21 BY MS. MARCY:

22 Q. Okay. Do you -- do you remember Mr. Patterson
23 staying kneeling beside Mr. Chatwin and telling him
24 medical was on the way to help him?

25 A. Yes.

1 Q. How many times did he say that to Mr. Chatwin?

2 A. I don't know how many times. I do remember
3 him saying that.

4 Q. So did Mr. Patterson stay there the entire
5 time, next to Mr. Chatwin?

6 MR. HAMILTON: Objection. Form -- foundation.
7 What time period are we talking about?

8 MS. MARCY: In this paragraph here.

9 MR. HAMILTON: Before they moved him?

10 MS. MARCY: Where he says, "I stayed kneeling
11 beside him and telling him that medical was on his way
12 to help him."

13 THE WITNESS: He stayed kneeling beside him
14 until we actually moved him to my car.

15 BY MS. MARCY:

16 Q. And where were you during that time that he
17 stayed kneeling beside him?

18 A. I was, I believe, standing. He was the only
19 one that kneeled down, until we actually moved
20 Mr. Chatwin.

21 Q. Where was Officer Baugh during that time?

22 A. I don't remember.

23 Q. Do you know?

24 A. I don't.

25 Q. Now, Mr. Patterson says here that "to prevent

1 any injury" -- it looks like he's saying -- "we
2 tried" -- up above, the second line there, "We tried to
3 keep him in that position until medical arrived." What
4 did you and Officer -- or Mr. Patterson do to try to
5 keep him in that position until medical arrived?

6 A. Said, "Please don't move. We've got medical
7 on the way. Please don't move."

8 Q. As he's in the gutter?

9 A. Yes, ma'am.

10 Q. Now, if you were concerned about moving him,
11 initially, then why did you end up moving him against
12 the vehicle?

13 A. Because he continued to move and try to sit
14 up.

15 Q. How did he do that? He was still in
16 handcuffs, right?

17 A. Yes.

18 Q. How did he -- how did he try to move to stand
19 up?

20 A. Rolling was the big thing, trying to get feet
21 under him -- or legs under him. Trying to get into a
22 sitting position.

23 Q. So walk me through that. When you say he was
24 "rolling," what do you mean? Was it side by side?

25 A. Yes.

1 Q. Did you ever know if anyone talked to a little
2 girl at the scene?

3 A. I knew that the sergeants had arrived to talk
4 to several people. I didn't know what particular
5 people.

6 Q. Okay. Will you look at Exhibit 5, now,
7 please?

8 (Whereupon, Exhibit No. 5 was introduced.)

9 THE WITNESS: Okay.

10 BY MS. MARCY:

11 Q. Do you recognize Exhibit 5? Any part of
12 Exhibit 5? Take your time looking through that.

13 A. I recognize quite a bit of it.

14 Q. All right. Well, let's just -- let's just go
15 through these quickly.

16 Do you know who took these photographs?

17 A. I know who took some of them.

18 Q. All right. Will you tell me who took some of
19 the photographs?

20 A. I did.

21 Q. Which ones? I'm sorry?

22 A. I did.

23 Q. Okay. Will you tell me which photographs you
24 took?

25 A. I believe I took the first one, the second

1 one; no idea on the next two; no idea on the two after
2 that; nor the next two. I believe I took the two with
3 the Honda.

4 Q. So the Honda -- we previously marked each
5 photograph, and it looks like it's not there. But the
6 Honda, I'll tell you, is "I" and "J." So you're talking
7 about the page with the picture of the white car?

8 A. Yes, ma'am.

9 Q. Okay.

10 A. And I believe I took the next two with the
11 bottle of vodka and Josh leaning against the truck. And
12 I believe I took the next two with the scraped knees and
13 the shot from above.

14 Q. And that -- yeah. That looks -- we labeled
15 that "N," as in --

16 A. No idea on the next two; and no idea on the
17 next four.

18 Q. All right. So why -- why did you take these
19 photographs?

20 A. To document the injuries.

21 Q. All right. And for what purpose, to document
22 them?

23 A. When somebody gets injured in the course of an
24 arrest, I want it documented what was done.

25 Q. But why do you feel like you have to document

1 time frame are we talking about?

2 BY MS. MARCY:

3 Q. From the time Mr. Chatwin -- if you have to
4 tell me the continuum of time -- from the time you see
5 Mr. Chatwin's head at the bottom of the driveway until
6 the paramedics arrived, where were you in that continuum
7 of time in relation to Mr. Chatwin?

8 A. I was either next to him, touching him, or
9 within feet of him.

10 Q. And when you say, "touching him," what were
11 you doing when you were touching him?

12 A. Moving him from the gutter to leaning against
13 my vehicle.

14 Q. Aside from moving him, did you touch him any
15 other time, until the paramedics arrived?

16 A. I don't believe so.

17 Q. If you look at the next pictures that you
18 took, we would call those "M" and "N," "M" being the top
19 where the knees show the markings.

20 A. Yes.

21 Q. When you took that photograph, did you notice
22 whether those -- those injuries were new or old? Could
23 you determine that?

24 A. I -- I don't remember, but I think I took them
25 because they were new. They looked new.

1 Q. Did you ever interview Mr. Chatwin about the
2 incident on May 18, 2010?

3 A. After it happened?

4 Q. Right. In other words, did you ever ask him
5 what happened, any details about the incident, where he
6 was -- I'll use the words Officer Patterson -- "placed"
7 on the ground?

8 A. I did not.

9 Q. All right. Going to -- look at your
10 preliminary hearing transcript. That would be Exhibit
11 9.

12 (Whereupon, Exhibit No. 9 was introduced.)

13 THE WITNESS: Okay.

14 BY MS. MARCY:

15 Q. All right. If you'll go to page 25.

16 A. Okay.

17 Q. Is this where you're talking about you were
18 searching the vehicle before you saw that Mr. Chatwin
19 was on the ground? This is part of it, right?

20 A. Yes.

21 Q. All right. So starting with Line 3, you
22 answered:

23 I gathered a -- gathered my camera, went
24 and began searching the vehicle. I would
25 guess I was at that for two or three minutes,

1 I would guess.

2 Q. Okay. Go ahead, please.

3 A. Turned around and Mr. Chatwin was laying
4 down on the ground, right down where the
5 driveway meets the road.

6 Now, my question is -- I notice here that
7 Mr. Hill did not ask you any questions about whether
8 anything happened to bring your attention to
9 Mr. Chatwin lying down on the ground. So my question
10 is: Did anything draw attention to you that
11 Mr. Chatwin was lying down on the ground? Such as a
12 noise or any words by, for instance, Mr. Patterson at
13 the time or Officer Baugh?

14 A. No.

15 Q. So you just happened to turn around and see
16 him on the ground?

17 A. Yes, ma'am.

18 MS. MARCY: I don't have anything else.

19 MR. HAMILTON: I got some follow-up questions.

20 EXAMINATION

21 BY MR. HAMILTON:

22 Q. Sergeant Harris, you said that you went to the
23 police academy in 1984; is that correct?

24 A. Yes.

25 Q. Why did you want to become an officer? A

1 police officer.

2 A. To help people. It sounded fun.

3 Q. To help people? And it sounded interesting to
4 you?

5 A. Yes.

6 Q. And did you get into the profession to injure
7 somebody?

8 A. No, sir.

9 Q. To use force and cause an injury?

10 A. No, sir.

11 Q. You were a police officer for -- with Salt
12 Lake City for 21 years; and then you said that you went
13 and started working for the railroad --

14 A. Yes.

15 Q. -- for a time. And then you got furloughed,
16 and that's when you went back to Draper City; is that
17 correct?

18 A. Yes.

19 Q. And when you went back to Draper City, did you
20 still have those same motives and intentions to help
21 people and serve people?

22 A. Yes.

23 Q. And you've now been with Draper City for nine
24 years?

25 A. Just about nine years.

1 Q. Okay. So when this incident happened back on
2 May 18th, 2010, you had been with Draper City for
3 approximately four years at that point in time?

4 A. Yes.

5 Q. And at that point in time, you were an
6 officer, not a sergeant, correct?

7 A. Correct.

8 Q. And tell me how you received the call that day
9 that brought you into interaction with Mr. Chatwin.

10 A. Dispatch had broadcast an attempt to locate
11 for a vehicle that had been at the Draper City Liquor
12 Store. The clerk there had said a person had come in,
13 and she had refused sales to the person, because he was
14 intoxicated. She was concerned enough that she --
15 after -- when the person left the store -- sales were
16 refused, he left, she went out and got a license plate
17 number for the car and called dispatch, and dispatch
18 broadcast the information.

19 Q. And what did you do after you received that
20 information?

21 A. I heard the broadcast, and I went and parked
22 near 12450 South and just -- by the intersection of 150
23 East.

24 Q. At some point, did you locate the vehicle that
25 had been described by dispatch?

1 A. Yes.

2 Q. And when was that?

3 A. It was -- it was in the -- late morning or
4 early afternoon, I believe. About noon.

5 Q. And after you located that vehicle, did you
6 notice anything about the way that vehicle -- that
7 vehicle was being operated?

8 A. I did. It made a right-hand turn onto 150
9 East. It signaled the turn properly, made the turn. As
10 I pulled in to get to 150 East, it got to -- it was kind
11 of in the center of the road and made an abrupt turn
12 from the center of the road instead of pulling to the
13 right. Made a right-hand turn to the driveway without a
14 signal.

15 Q. And did you, at that point, initiate a stop?

16 A. It was already stopped. But, yes, I pulled in
17 behind the car and called out that I was at that address
18 with the car that was the subject of the ATL.

19 Q. Did you make contact with the driver?

20 A. I did.

21 Q. And was that driver Mr. Chatwin?

22 A. It was.

23 Q. And when you had your first initial
24 interaction with Mr. Chatwin, how did he seem?

25 A. Very quiet. He seemed intoxicated.

1 Q. Why do you say that he seemed intoxicated?

2 A. He rolled the window down. I could smell
3 alcohol. He had trouble -- I asked for document -- I
4 asked if he had been drinking. He didn't answer. I
5 asked for documents. He provided an ID card. However,
6 he had trouble identifying documents from his glove box,
7 the registration and the insurance documentation.

8 Q. At some point, did Mr. Chatwin just hand you
9 the keys without saying anything?

10 A. He did.

11 Q. And at some point, did you decide to
12 administer field sobriety tests?

13 A. Yes. From the odor of the alcohol and that
14 interaction, I called for another car to come and waited
15 for them to get there before I administered the test.

16 Q. And who -- what other car arrived? Who
17 arrived?

18 A. Officer Patterson arrived, and then Officer
19 Baugh.

20 Q. Did you administer field sobriety tests?

21 A. Yes.

22 Q. Let me draw your attention to what's been
23 marked as Exhibit No. 4 and Exhibit No. 8. I believe
24 they're in this pile right in front of you.

25 A. Okay.

1 Q. During -- after you had him perform that test,
2 did you have him perform any other tests?

3 A. Yes. The one-legged stand test.

4 Q. How was his performance on that test?

5 A. He began the test as I was demonstrating it.
6 He raised his hands, and I said, "That's not what I
7 instructed you to do." He told me that was what I
8 instructed.

9 I said, "Would you like me to give the
10 instructions again?"

11 He said, no, he understood how to do it. And
12 he performed the test by raising his hands -- his arms
13 so they went straight out from his shoulders, and then
14 raised his leg with the thigh parallel to the ground and
15 the foot dangling down. And I just let him complete it.
16 And he put his foot down three times while he counted
17 off the 30 seconds.

18 Q. So with his performance in these tests, did
19 they indicate anything to you, specifically?

20 A. Impairment.

21 Q. And did you notice anything about his behavior
22 or his attitude?

23 A. His attitude changed on the last test. He was
24 very cooperative up to that point.

25 Q. How did it change?

1 FURTHER EXAMINATION

2 BY MS. MARCY:

3 Q. Sergeant Harris -- and I just realized at the
4 end of the deposition, I've been calling you "officer."
5 I apologize. Sergeant Harris. You can cross out all
6 the "officers" at the beginning.

7 A. I don't care.

8 Q. When you just testified that Mr. Chatwin's
9 attitude changed during the last field sobriety test --

10 A. Yes, ma'am.

11 Q. You said he became argumentative?

12 A. Yes.

13 Q. What did you mean by that?

14 A. When I -- I explained to him, I said, "That's
15 not what I demonstrated. Would you like me to
16 demonstrate it again?"

17 He told me, "No. That is what you
18 demonstrated, and I know how to do it."

19 Q. Anything else that he said or did that you
20 would classify as argumentative?

21 A. No. It was just arguing about the procedure,
22 the field sobriety test.

23 Q. Did he -- so did he yell at you?

24 A. No.

25 Q. Did he yell any vulgarities at you?

1 A. No.

2 Q. Did he fight you?

3 A. No.

4 Q. Was he squirming around?

5 A. No.

6 Q. Did he take any aggressive actions whatsoever
7 towards you?

8 A. No.

9 MS. MARCY: Okay. That's all I have.

10 MR. HAMILTON: We ask for the opportunity to
11 read and sign. You can have that transcript sent to me.

12 (Proceedings concluded at 11:13 a.m.)

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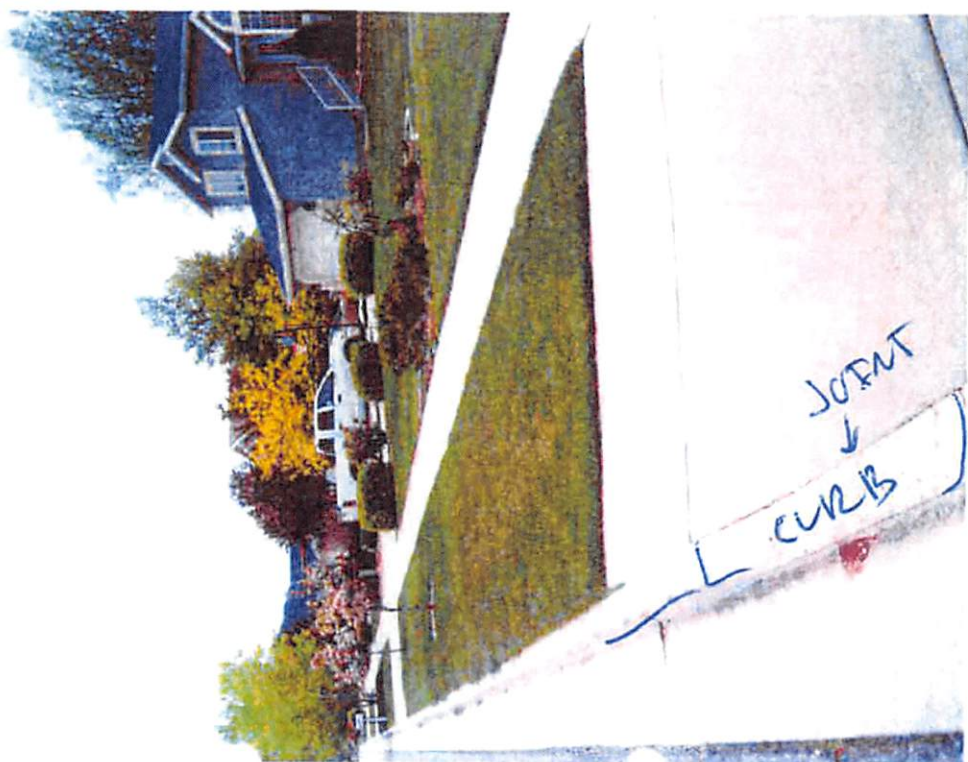


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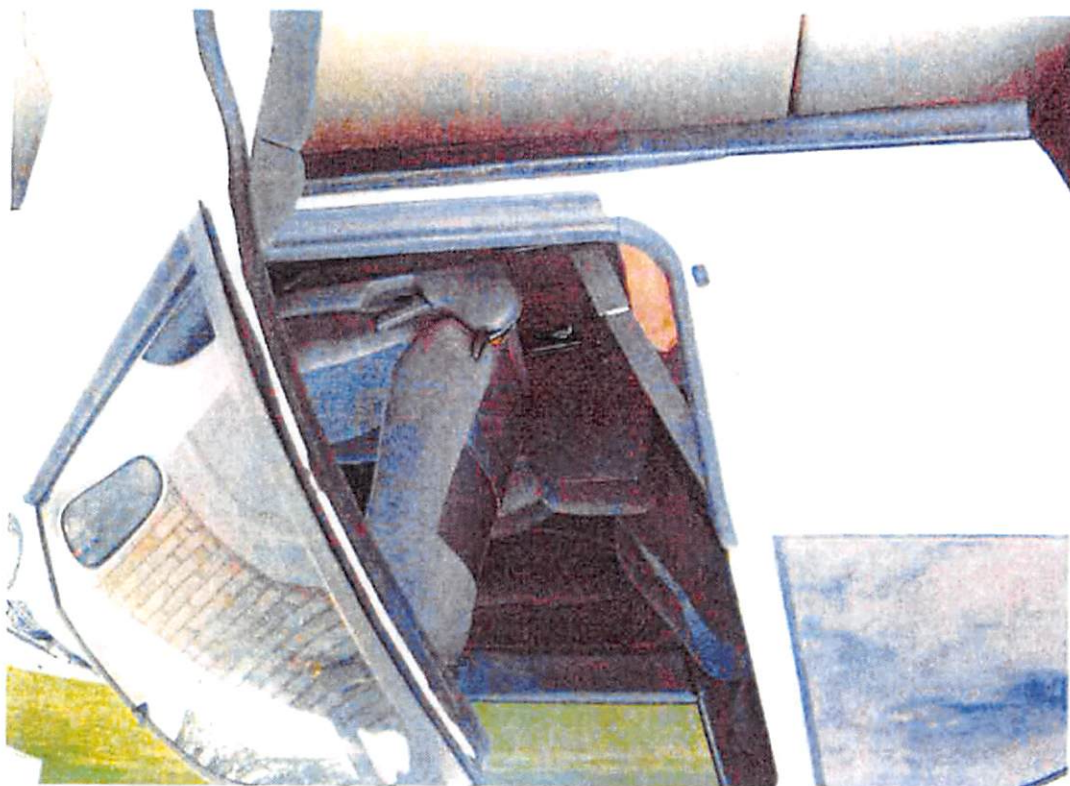
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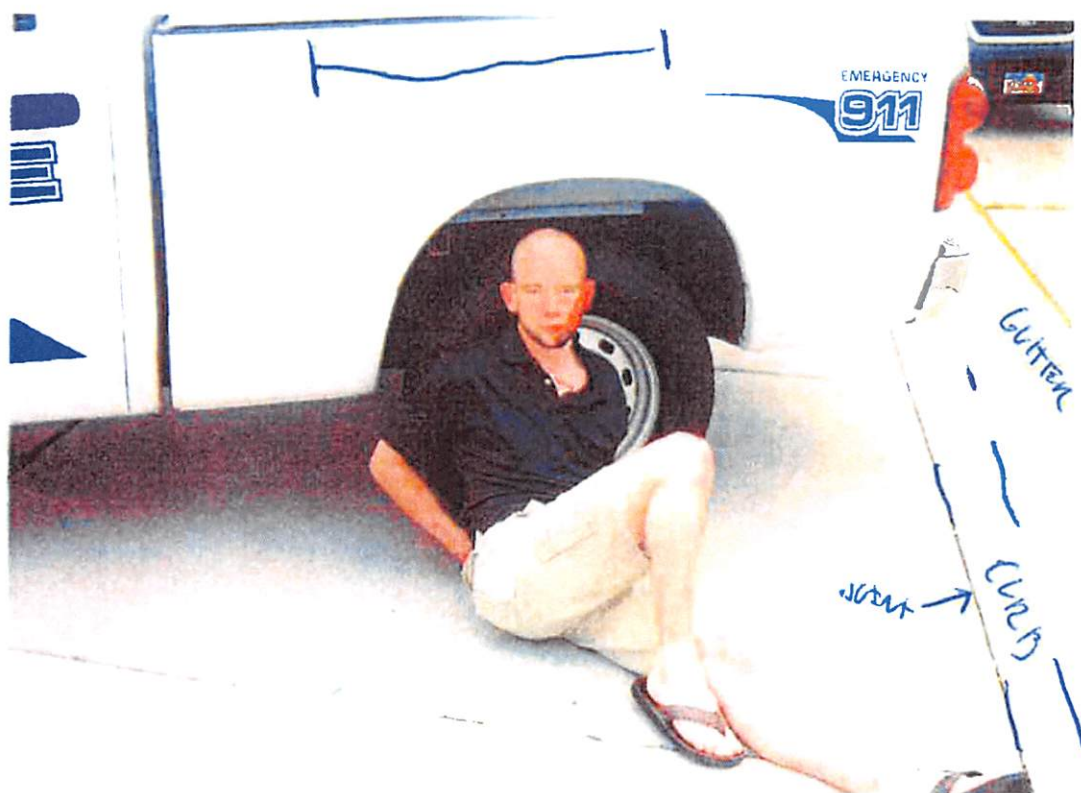
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DRAPER-CHT-4164

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